



HAWAI‘I CIVIL RIGHTS COMMISSION

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GUIDELINE FOR PRE-EMPLOYMENT INQUIRIES (APPLICATION FORMS AND JOB INTERVIEWS)

This is intended as a guideline for pre-employment inquiries and does not have the force or effect of administrative rules or Hawai‘i laws. If there are any inconsistencies, the rules and Hawai‘i law will control.

SUBJECT	LAWFUL INQUIRIES	UNLAWFUL INQUIRIES
RACE or COLOR		<ul style="list-style-type: none"> • Applicant’s race. • Color of applicant’s skin, eyes, hair, etc., or other questions directly or indirectly indicating race or color. • Applicant’s height. • Views on Black Lives Matter protests.
ANCESTRY or NATIONAL ORIGIN (country of origin)	<ul style="list-style-type: none"> • Languages applicant reads, speaks or writes fluently, if use of language other than English is relevant to the job for which applicant is applying. 	<ul style="list-style-type: none"> • Applicant’s nationality, lineage, ancestry, national origin, descent, or parentage. • Nationality of applicant’s parents or spouse; maiden name of applicant’s wife or mother. • Language commonly used by applicant. “What is your mother tongue?”
SEX (including Gender Identity and Gender Expression)		<ul style="list-style-type: none"> • Sex of applicant. • “Are you expecting?” “Are you pregnant?” “Do you use birth control?” • “What are your plans for having a family?” • Applicant’s weight or height (unless it is a BFOQ). • Mr., Mrs., Miss, or Ms. • “Were you born male or female?” • “Why don’t you wear makeup?”
SEXUAL ORIENTATION		<ul style="list-style-type: none"> • Whether an applicant has a preference for heterosexual, homosexual, or bisexual partners/relationships.
MARITAL STATUS		<ul style="list-style-type: none"> • Whether single, married, divorced, widowed, separated, etc. • Mr., Mrs., Miss, or Ms. • Names and ages of spouse and children; provisions for child care. • Spouse’s place of employment. • “With whom do you reside?” • “Do you live with your parents?”

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AGE	<ul style="list-style-type: none"> • Inquiry whether or not the applicant meets the minimum age requirement set by law. • If a minor, require proof of age in the form of a work permit or a certificate of age. • After being hired, require proof of age (if age is a legal requirement) or if the inquiry serves a legitimate record-keeping purpose. 	<ul style="list-style-type: none"> • Requirement that applicant state age or date of birth. • Requirement that applicant produce proof of age in the form of a birth certificate or baptismal record. • Phrases such as “young,” “college student,” “girl,” “boy,” “recent college graduate,” “retired person,” or “supplement your pension.” • Dates of attendance/completion of elementary/ high school/college.
RELIGION	<ul style="list-style-type: none"> • An applicant may be advised concerning normal hours and days of work. • “Apart from absences for religious observances, will you be available for work at the following times?” • After a position is offered, inquiry into the need for reasonable religious accommodation. 	<ul style="list-style-type: none"> • Applicant’s religious denomination or affiliation, church, parish, pastor, or religious holidays observed.** • Applicant is told: “This is a Catholic/Protestant/Jewish/atheist/etc. organization.”** • “Do you attend religious services or a house of worship?”** • Any inquiry to indicate or identify religious customs, or holidays observed. <p><i>**These inquiries are unlawful unless employer is exempt under HRS §378-3(5).</i></p>
DISABILITY	<ul style="list-style-type: none"> • “Are you able to perform the essential functions of this job with or without a reasonable accommodation?” • After the job offer is made, require a physical examination if that is a requirement for all employees. 	<ul style="list-style-type: none"> • Whether applicant has any physical or mental disability. • “Have you ever collected workers’ compensation or temporary disability insurance for a previous illness or injury?” • Questions regarding applicant’s general state of health or medical condition.
ARREST & COURT RECORD	<p><u>After making a conditional job offer:</u></p> <ul style="list-style-type: none"> • An employer may make inquiries regarding an applicant’s felony convictions (not arrests) within seven years from time of application and misdemeanor convictions (not arrests) within five years, excluding periods of incarceration, and that are rationally 	<p><u>Prior to making a conditional job offer:</u></p> <ul style="list-style-type: none"> • “Have you ever been arrested or convicted?” or ask to check into person’s arrest or conviction record.**** <p><i>****These inquiries are unlawful except as permitted by law. See HRS §378-2.5(d). There may be other state or federal laws that permit such inquiries.</i></p>

	<p>related to the duties and responsibilities of the position.***</p> <p>***<i>Except that employers who are expressly permitted to consider an individual's criminal history for employment purposes pursuant to law may do so before making a conditional job offer.</i></p>	
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CREDIT HISTORY or CREDIT REPORT	<p><u>After making a conditional job offer:</u></p> <ul style="list-style-type: none"> An employer may make inquiries into an applicant's credit history or credit report, and the conditional job offer may be withdrawn if information in the credit history or credit report is directly related to a BFOQ. 	<p><u>Prior to making a conditional job offer:</u></p> <ul style="list-style-type: none"> Inquiry into applicant's credit history or credit report. ***** "What is your credit score?"***** "Have you ever filed for bankruptcy?"***** <p>*****These inquiries are unlawful except for managerial or supervisory jobs, or if the employer is either: 1) expressly permitted or required to inquire into an individual's credit history for employment purposes pursuant to any federal or state law, or 2) a financial institution in which deposits are insured by a federal agency having jurisdiction over the financial institution.</p>
VICTIM OF DOMESTIC VIOLENCE or SEXUAL VIOLENCE		<ul style="list-style-type: none"> Whether applicant has been a victim of domestic violence or sexual violence. "Have you ever sought a restraining order against your spouse or a family member?"
NAME	<ul style="list-style-type: none"> Whether applicant has used another name (for the purpose of checking the applicant's past work record). 	<ul style="list-style-type: none"> Inquiries about the name which would indicate applicant's lineage, ancestry, national origin, descent, or marital status (i.e. maiden name). Inquiry into previous name of applicant (if not for the purpose of checking the applicant's work record). Mr., Mrs., Miss, or Ms.
ADDRESS or DURATION OF RESIDENCE	<ul style="list-style-type: none"> Applicant's address. Inquiry into place and length of current and previous addresses. 	<ul style="list-style-type: none"> Specific inquiry into only foreign addresses which may indicate national origin.

BIRTHPLACE, CITIZENSHIP		<ul style="list-style-type: none"> • Whether applicant, parents, or spouse are naturalized or native-born U.S. citizens. • Birthplace of applicant. • Birthplace of applicant’s parents, spouse, or other relatives. • Requirement that applicant submit proof of birth document prior to hiring. • “Of what country are you a citizen?” • Date when applicant, parents, or spouse acquired U.S. citizenship. • Requirement that applicant produce naturalization papers.
PHOTOGRAPH	<ul style="list-style-type: none"> • May be required for identification <u>after</u> hiring. 	<ul style="list-style-type: none"> • Request photograph <u>before</u> hiring unless it is related to a BFOQ for the position.
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EDUCATION	<ul style="list-style-type: none"> • Applicant’s academic, vocational, or professional education; schools attended. 	<ul style="list-style-type: none"> • Any inquiry asking specifically the nationality, racial, or religious affiliation of a school. • Dates of attendance and/or graduation from school.
EXPERIENCE	<ul style="list-style-type: none"> • Applicant’s work experience. 	
NOTICE IN CASE OF EMERGENCY	<ul style="list-style-type: none"> • Name and address of <u>person</u> to be notified in case of emergency. 	<ul style="list-style-type: none"> • Name and address of <u>relative</u> to be notified in case of emergencies.
ORGANIZATIONS, ACTIVITIES	<ul style="list-style-type: none"> • Membership in <u>job-related</u> clubs, organizations, churches, and schools. Applicant may omit those that reveal any protected class of the applicant. • What offices are held, if any? 	<ul style="list-style-type: none"> • The names of all organizations, clubs, societies, and lodges to which the applicant belongs.
REFERENCES	<ul style="list-style-type: none"> • “By whom were you referred for a position here?” • Names of persons willing to provide professional and/or character references for applicant. 	<ul style="list-style-type: none"> • Require the submission of a religious reference. • Questions to references that elicit information specifying applicant’s race, religion, age, sex (including gender identity or gender expression), color, disability, marital status, ancestry, national origin, arrest and court record, credit history or credit report, domestic violence or sexual violence victim status, or sexual orientation.
MISCELLANEOUS	<ul style="list-style-type: none"> • Notice to applicants that any misstatements or omission of material facts in the application may be cause for dismissal. 	<ul style="list-style-type: none"> • Require an applicant to submit a resume containing answers to unlawful inquiries. • Require an employee to enter into a non-disclosure agreement pertaining to sexual harassment or sexual assault.

<p style="text-align: center;">BONA FIDE OCCUPATIONAL QUALIFICATION (BFOQ)</p>	<ul style="list-style-type: none"> • BFOQ Exception: Nothing shall prohibit the establishment and maintenance of a bona fide occupational qualification (BFOQ). To establish a protected basis as a BFOQ, an employer is required to show: a) that the essence of the business operation would be undermined by the hiring of a person from the protected class, or b) a factual basis for believing that all or substantially all persons from the protected class would be unable to safely or efficiently perform the job duties, or it is impossible or highly impractical to deal with such persons on an individualized basis. 	<ul style="list-style-type: none"> • Require an applicant to submit a resume containing answers to unlawful inquires.
<p>REPRODUCTIVE HEALTH DECISIONS</p>		<ul style="list-style-type: none"> • Do you intend to use health insurance for birth control or termination of a pregnancy? • Do you plan to get pregnant in the next five years? • Do you plan to use assisted reproductive technology?